

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUSSELL KIRK ROBERTS,

Defendant.

Case No. 3:20-cr-00050-MMD-CSD
Related Case: 3:23-cv-00323-MMD

ORDER

The Court sentenced Defendant Russell Kirk Roberts to 51 months followed by three years of supervised release on one count of conviction for felon in possession of a firearm on June 2, 2021. (ECF No. 47.) On July 3, 2023, Roberts filed a motion under 28 U.S.C. § 2255 ("Motion") based on proposed amendments to the U.S. Sentencing Guidelines ("Guidelines") as they relate to criminal history points which he argues would lower his sentence. (ECF No. 50.) The Court set a briefing schedule. (ECF No. 51.) Before the government filed its response (ECF No. 55), Roberts filed a motion to correct the Motion (ECF No. 53). Roberts clarified that he meant to seek relief under 18 U.S.C. § 3582(c), not under Section 2255. (*Id.*) Roberts subsequently reiterated this request to correct the Motion in a letter (ECF No. 57), which the Court construes as a second motion. The Court grants both motions (ECF Nos. 53, 57) and will construe the Motion as seeking relief under Section 3582(c). So construed, the Court denies the Motion.

Roberts seeks relief under proposed amendments to § 4A1.1 of the Guidelines as they relate to reduction of criminal history points assessed to an offense committed while under another criminal sentence from two points to one point. See Sentencing Guidelines for United States Courts, 88 FR 28254-01, 2023 WL 3199918, at *28270 (May 3, 2023). But as Roberts recognizes, and the government points out, the proposed amendments

1 are not effective until November 1, 2023, assuming Congress does not modify or reject
2 them.¹ Accordingly, the Court agrees with the government that the Motion is premature.

3 It is therefore ordered that Roberts' motion under Section 3582(c) (ECF No. 50) is
4 denied without prejudice to Roberts bringing another motion for relief after the effective
5 date of the proposed amendments.


6 It is further ordered that a certificate of appealability is denied.

7 It is further ordered that Roberts' motions seeking to clarify the title of his Motion
8 as originally filed (ECF Nos. 53, 57) are granted as specified herein.

9 The Clerk of Court is directed to enter judgment accordingly and close this case.

10 The Clerk of Court is further directed to enter judgment in Related Case: 3:23-cv-
11 00323-MMD and close that case as well.

12 DATED THIS 18th Day of August 2023.

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16 MIRANDA M. DU
17 CHIEF UNITED STATES DISTRICT JUDGE
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28 ¹Roberts asserts that he would have served his sentence even by the time the
Court rules on the Motion and asks that a reduction in his sentence be applied to post-
incarceration terms. (ECF No. 53 at 3-4.) Thus, Roberts may not receive the benefit of §
4A1.1 assuming it goes into effect on November 1, 2023.